

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2740 of 1999**

Babulal @ Babuji, S/o. Ledgu Satnami, aged 29 years, resident of
Chandiya Pathra, P.S. Simga, District Raipur (M.P.)

---- Appellant

Versus

State of Madhya Pradesh through Police Station Suhela, District
Raipur (M.P.) (now C.G.)

---- Respondents

For Appellant : Ms. Indira Tripathi, Advocate
For Respondents : Mr. Vivek Singhal, Penal Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment On Board

01.11.2017

- 1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 07.09.1999 passed by Second Additional Sessions Judge, Balodabazar, District Raipur (C.G.) in Sessions Case No. 64/1999, wherein the trial Court convicted the accused/appellant under Section 326 of the IPC and sentencing him to undergo rigorous imprisonment for five years and to pay fine of Rs. 1000/- with default stipulations.
- 2) In the present case, name of injured is Narrotam Satnami and he is the step-brother of the appellant. As father of the appellant and the injured is same and the mothers are different.
- 3) As per prosecution case, on 09.11.1998 at about 7 am, when the injured had gone to work the accused/appellant came there and

asked him to accompany him, thereafter the injured and the accused/appellant left the place and owing to the previous dispute regarding possession of land the accused/appellant caused injury on the chest and abdomen of the injured. The matter was reported to Police Station Suhela. The injured was sent for medical examination. Certain articles were seized. Statement of the witnesses were recorded during the investigation. After completion of the investigation, charge sheet was filed against the appellant before the trial Court under Section 307 of the IPC, to which the appellant did not plead guilty and the trial was conducted and after completion of the trial, the trial Court convicted the appellant as mentioned above.

- 4) Learned counsel for the appellant submits that the appellant has been falsely implicated on account of land dispute and the statement of the complainant is not reliable. She submits that at the time of incident it was the complainant who possessed the knife and when he tried to assault the appellant, the appellant snatched the knife from him and during snatching some injury caused to the injured for which no criminal liability can be fastened on the accused/appellant. Learned counsel for the appellant further submits that the statement of the prosecution witnesses are contradictory in nature and the same cannot be relied upon and it is not established by the prosecution that the injury found on the body of the injured can be caused by the knife allegedly seized from the accused/appellant. In support of her argument, learned counsel for the appellant placed reliance in **Sattan Sahani Vs. State of Bihar and other (2002) 7 SCC 604**

and prays that the sentence imposed upon him may be reduced to the period already undergone by him.

- 5) Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking the jurisdiction of appeal.
- 6) Narrotam (PW-1) is the injured person in the case. He deposed that the accused/appellant has already sold his shares of land and has left his village. On the date of incident, the accused/appellant came to village and then he asked him to make sale deed for the said land which was sold by the accused/appellant, thereafter, he went to his barn. All of a sudden the accused/appellant assaulted him by knife and the same was inflicted on his chest. Version of this witness is supported by the version of Makhanlal (PW-2), Santoshi (PW-3), Lekhram Verma (PW-4), Piruram (PW-5), Tekram Diwakar (PW-6), Sunderlal (PW-7), Ashok Kumar Norge (PW-9), Pawram (PW-10), Meethalal (PW-11), Asmatbai (PW-13), Ramlabai (PW-14) to whom the incident was informed. Again, the version of the injured is supported by the version of Dr. Rakesh Chaba (PW-12) who examined the injured on 07.11.1998 and noticed incised wound measuring 1cm x 1' over the right side of chest at the level of 5th rib, anteriorly muscle seen. Incised wound ½ cm X 2cm over right hypochondrium reddish superficial. The doctor opined that the injury was caused by hard and sharp object and the period was since 12 hours of the examination.

- 7) Abdul Washim (PW-15) who was the Registrar of Mekahara Hospital, Raipur deposed that the injuries caused may be grievous in nature. Dr. P.L. Yadu (PW-20) deposed that the injured was admitted in Medical College, Raipur on 18.11.1998 and discharged on 07.11.1998. From the statement of these witnesses it is established that the injured was unable to work for more than 20 days and as per section 320 of the IPC, if any person is not able to work for 20 days due to injury, the injury will be treated as grievous injury.
- 8) There is no substance in the argument of learned counsel for the appellant that the complainant was in possession of knife and there is no evidence for substantiating the same nor it has not come in the cross-examination of the any prosecution witnesses. The defence side has not examined any witnesses in support of that. Further, there is no substance in the argument that the injury is simple in nature but from the medial evidence it is established that the injury was grievous and the same was caused by sharp object. It is true, that there is minor contradiction in the statement of the prosecution witness but same is bound to occur. The witnesses have deposed before the Court after lapse of time and their version is not similar to tape record and causing grievous injury by the sharp object is an offence under Section 326 of the IPC for which the trial Court has rightly convicted the appellant and the same is not liable to be interfered by this Court invoking the jurisdiction of appeal. Conviction of the appellant imposed by the trial Court under Section 326 of the IPC is hereby affirmed .

9) Heard on sentence part. As per record, the accused/appellant was in jail from 09.11.1998 to 07.09.1999, 07.09.1999 to approximately 15.10.1999 and again from 31.03.2005 to approximately 14.07.2005 and he remained in jail for about 14 months. The incident happened in the year 1995 and after 22 years it would not be proper to send them back jail again. The appellant is sentenced to the period already undergone by them for the offence under Sections 326 of the IPC, fine amount will remain intact.

10) With these modifications the appeal is allowed in part.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Santosh